

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ 176-3117  
Administrative Law Judge Division  
August 21, 2003

**R E S O L U T I O N**

RESOLUTION ALJ 176-3117. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

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The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

**The Categories**

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

### **Mixed or Unclear Category Proceedings**

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hl2

### **Next Steps**

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

### **Conclusion**

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

**IT IS ORDERED** that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on August 21, 2003, the following Commissioners voting favorably thereon:

/s/ WILLIAM AHERN

WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

## PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3117 (8/21/03)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A03-07-006</b> ITC DELTACOM COMMUNICATIONS, INC., dba ITC DELTACOM, ITC DELTACOM, INC., WELSH, CARSON, ANDERSON & STOWE VIII, L.P., for authority to transfer stock.	Ratesetting	Ratesetting	NO
<b>A03-07-011</b> STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, for an order authorizing the Department to widen the existing Cajon Overhead over tracks owned by Burlington Northern Santa Fe Railroad, C.P.U.C. No. 2-78.00-A, U.S.D.O.T. No. 027860A in the County of San Bernardino.	Ratesetting	Ratesetting	NO
<b>A03-07-012</b> STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, for an order authorizing the Department to construct a new freeway under the existing Muscoy Underpass, U.S.D.O.T. No. 747224N at Milepost 487.10 on the BB line of the Union Pacific Railroad Company in the County of San Bernardino.	Ratesetting	Ratesetting	NO
<b>A03-07-013</b> LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, for an order authorizing the construction of a two-track grade separated crossing for the Eastside Corridor Light Rail Transit Line above and across the El Monte Busway, above and across the State 101 Freeway and above and across Commercial Street in the City of Los Angeles.	Ratesetting	Ratesetting	NO
<b>A03-07-014</b> PACIFICORP, for Approval of Post 2002 Low-Income Energy Efficiency Program Funding.	Ratesetting	Ratesetting	NO
<b>A03-07-015</b> CITY OF SAN MARCOS, for an Order authorizing the construction of a public crossing at separated grades across the North County Transit District Escondido Subdivision main line within the City of San Marcos, County of San Diego, C.P.U.C. Crossing No.106E-113.90-A.	Ratesetting	Ratesetting	NO
<b>A03-07-017</b> SOUTHWEST GAS CORPORATION, for approval of Program Year 2004 Low-Income Energy Efficiency Program Budgets.	Ratesetting	Ratesetting	NO

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<b>A03-07-018</b> FIRST CLASS TRANSPORTATION, LLC, TAMJIDI, HAMIDREZA, dba SEA TOP SHUTTLE, to transfer control of the passenger stage authority to First Class Transportation, LLC under Section 851, et seq., of the California Public Utilities Code; and to establish a zone of rate freedom under Section 454.2 of the Public Utilities Code.	Ratesetting	Ratesetting	NO
<b>A03-07-019</b> AVISTA CORPORATION, for approval of Program Year 2004 Low Income Energy Efficiency Program Budget.	Ratesetting	Ratesetting	NO
<b>A03-07-021</b> CHOICE TELECOMM, LLC, (U 6733-C), for a Certificate of Public Convenience and Necessity to provide Limited Facilities-Based and Resale Competitive Local Exchange Services within the California Service Areas of Pacific Bell and Verizon California, Inc.	Ratesetting	Ratesetting	NO
<b>A03-07-022</b> PANASIA COMMUNICATIONS CORP., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-07-023</b> INDEPENDENT TELECOMMUNICATIONS SYSTEMS, INC., dba ITS COMMUNICATIONS AND IXC DIRECT, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-07-024</b> CALIFORNIA ASSOCIATION OF TELECOMMUNICATIONS COMPANIES, on behalf of its members, for Clarification, or, alternatively, an exemption from the Reporting Requirements of General Order 77-K.	Quasi- legislative	Quasi- legislative	NO
<b>A03-07-025</b> ALPINE NATURAL GAS COMPANY OPERATING COMPANY NO. 1 LLC, in compliance with D03-03-007 (Program Year 2004 Low Income Energy Efficiency Plan).	Ratesetting	Ratesetting	NO

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Resolution ALJ 176-3117 (8/21/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A03-07-027</b> SOUTHERN CALIFORNIA EDISON COMPANY, for an Order approving the Settlement Agreement between Southern California Edison Company (U 338-E) and Salton Sea Power Generation, L.P., et al.	Ratesetting	Ratesetting	YES
<b>A03-07-028</b> NETLOJIX TELECOM, INC., ( U 6303-C), for a Certificate of Public Convenience and Necessity to provide (i) Limited resold and facilities-based competitive local exchange service throughout the service territories of SBC California, Inc., Verizon California, Inc., Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc.; and (ii) facilities-based interexchange service statewide.	Ratesetting	Ratesetting	NO
<b>A03-07-029</b> SOUTHERN CALIFORNIA EDISON COMPANY, to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others in respect of the issuance of Debt Securities to finance its Fuel Oil, Nuclear Fuel, Natural Gas, and Coal Inventories in an aggregate principal amount not to exceed \$750,000,000; to execute and deliver one or more indentures; to sell, lease, assign, mortgage or otherwise dispose of or transfer utility property; and for an exemption from the Commission's Competitive Bidding Rule.	Ratesetting	Ratesetting	NO
<b>A03-07-030</b> SOUTHERN CALIFORNIA EDISON COMPANY, to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others in respect of the issuance of Debt Securities, the total aggregate principal amount of such indebtedness and guarantees not to exceed \$3.0 billion; to execute and deliver one or more indentures; to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; to issue, sell and deliver in one or more series, an aggregate amount not to exceed \$300 million par or stated value of Cumulative Preferred Stock--\$25 Par Value, Cumulative Preferred Stock--\$100 Par Value, Preference Stock or any combination thereof and for an exemption from the Commissions Competitive Bidding Rule.	Ratesetting	Ratesetting	NO



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NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A03-07-032</b> SOUTHERN CALIFORNIA EDISON COMPANY, for Approval of a Power Purchase Agreement under PUHCA Section 32(k) between the Utility and a wholly-Owned Subsidiary and for Authority to Recover the Costs of such Power Purchase Agreement in Rates.	Ratesetting	Ratesetting	YES
<b>A03-07-033</b> ESSEX ACQUISITION CORPORATION, NOW COMMUNICATIONS, INC., dba NOW COMMUNICATIONS OF MISSISSIPPI, INC., Essex Acquisition Corporation for Authority to acquire certain assets of NOW Communications, Inc. (U 6169-C) and request for expanded authority.	Ratesetting	Ratesetting	NO
<b>A03-07-035</b> MOTION TELECOM, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-07-036</b> CALIFORNIA-AMERICAN WATER COMPANY, (U 210-W) for an order Authorizing it to increase rates charged for water service in its Los Angeles Division by \$1,354,500 or 7.56% in the year 2004; by \$842,100 or 4.68% in the year 2005; and by \$1,052,000 or 5.22% for the year 2006.	Ratesetting	Ratesetting	NO
<b>A03-07-037</b> DIAL-AROUND TELECOM, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-07-038</b> BLUE & GOLD FLEET, L.P., to increase fare levels for the transportation of passengers in vessel common carrier service between Alameda/Oakland, on the one hand, and authorized points in San Francisco and Angel Island State Park, on the other hand.	Ratesetting	Ratesetting	NO
<b>A03-07-039</b> PENINSULA CORRIDOR JOINT POWERS BOARD, for Authority to construct a new pedestrian overpass to replace an existing pedestrian crossing at grade, construct two private service crossings and to construct a new crossing at grade over a Union Pacific Railroad spur track at the Bayshore Station, City of Brisbane, County of San Mateo.	Ratesetting	Ratesetting	NO

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<b>A03-07-042</b> R2C COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-07-043</b> MTEL AMERICA, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-07-044</b> SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), for Authority to Lease available land on the Redondo-LaFresa Transmission Right of Way to Fox Hollow I, LLC.	Ratesetting	Ratesetting	NO
<b>A03-07-045</b> BCE NEXXIA CORPORATION, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-07-046</b> CORBAN COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
<b>A03-07-048</b> STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, for Authority to replace the existing 101/116 Separation and Overhead on U.S. Route 101 in the City of Petaluma in the County of Sonoma (Bridge No.20-0155L, P.U.C. No. 1085-37.50-A, D.O.T. No. 863534A).	Ratesetting	Ratesetting	NO
<b>A03-07-049</b> CITY OF SOUTH PASADENA, PASADENA AVENUE MONTEREY ROAD COMMITTEE, for variance of General Order 75-C.	Ratesetting	Ratesetting	NO
<b>A03-07-050</b> CITY OF SOUTH PASADENA, for approval of Ordinance 2121 relating to limitations of train speeds pursuant to section 7658 of the California Public Utilities Code.	Ratesetting	Ratesetting	NO

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<b>A03-07-051</b> PACIFIC TERMINALS LLC, for authorization to guarantee its parents debt and related obligations, to encumber its public utility property and to treat the cancellation of its outstanding debt as additional members contribution, or alternatively, should such request be denied, to incur indebtedness payable more than twelve months after the date incurred.	Ratesetting	Ratesetting	NO
<b>A03-07-052</b> PACIFIC PIPELINE SYSTEM LLC, for authorization to guarantee its parents debt and related obligations, to encumber its public utility property and to treat the cancellation of its outstanding debt as additional members contribution, or alternatively, should such request be denied, to incur indebtedness payable more than twelve months after the date incurred.	Ratesetting	Ratesetting	NO
<b>A03-08-001</b> HARBOR BAY MARITIME, INC., for rate relief and a general passenger fare increase on its Vessel Common Carrier Service on San Francisco Bay between the Harbor Bay Ferry Terminals in Alameda and authorized points in San Francisco.	Ratesetting	Ratesetting	YES
<b>A03-08-002</b> PACIFIC GAS AND ELECTRIC COMPANY, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF UNION CITY, for an order authorizing the sale and conveyance of a certain parcel of land in Alameda County pursuant to Public Utilities Code Section 851.	Ratesetting	Ratesetting	NO
<b>A03-08-003</b> CITY OF SANTA ROSA, PACIFIC GAS AND ELECTRIC COMPANY, for an Order ratifying permanent easements granted to the City by PG&E and authorizing the sale and conveyance of certain parcels of land in Sonoma County to the City pursuant to Public Utilities Code Section 851.	Ratesetting	Ratesetting	NO

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<b>A03-08-004</b> PACIFIC GAS AND ELECTRIC COMPANY, for adoption of its 2004 Energy Resource Recovery Account (ERRA) forecast revenue requirement, for review of contract administration, least cost dispatch and procurement activities during the record period January 1, 2003 through May 31, 2003, and for approval of its 2004 Ongoing Competition Transition Charges (CTC) revenue requirement and proposed rate design. [Includes Prepared Testimony, Volumes I and II]	Ratesetting	Ratesetting	YES
<b>A03-08-005</b> LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, for an order authorizing the construction of a two-track at-grade crossing for the Eastside Corridor Light Rail Transit Line across Ditman Avenue and across Rowen Avenue in the County of Los Angeles.	Ratesetting	Ratesetting	NO
<b>A03-08-006</b> MISRA, ATUL, dba ALLROUTE EXPRESS, for authority to operate as a passenger stage corporation between points in the Counties of Alameda, Santa Clara and San Mateo, and the Oakland, San Francisco and San Jose International Airports.	Ratesetting	Ratesetting	NO
<b>A03-08-007</b> PEAK COMMUNICATIONS, INC., for a certificate of public convenience and necessity to provide resold and limited facilities-based competitive local exchange service throughout the service territories of SBC California, Inc., Verizon California, Inc., Roseville Telephone Company, and Citizens Telecommunications Company of California, Inc.; and facilities-based interexchange service statewide.	Ratesetting	Ratesetting	NO
<b>A03-08-008</b> SIERRAPINE, LTD., for waiver of collection of Direct Access Cost Responsibility Surcharge for its Rocklin Facility.	Ratesetting	Ratesetting	YES
<b>A03-08-010</b> PAXIO, INC., for a Certificate of Public Convenience and Necessity in order to provide Limited Facilities-Based and Resold Competitive Local Exchange, Access and Interexchange Service.	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION  
SCHEDULE**

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<b>A03-08-011</b> L. A. TOP SHUTTLE INC., to modify its passenger stage certificate to permit scheduled service between hotels in and around Buena Park and Anaheim, California, on one hand, and on the other Los Angeles International Airport (LAX).	Ratesetting	Ratesetting	NO